Arrow Vista Sdn Bhd v Jawatankuasa Kerja Tanah Wilayah Persekutuan

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION R2–25–32 OF 1998

AZMEL J

23 DECEMBER 1998

Civil Procedure *— Mode of commencement — Declaration, application for — Whether by way of originating motion — Reliefs sought include orders of mandamus — Non compliance with O 53 of Rules of the High Court 1980 — Whether fatal to application — National Land Code 1965 s 418(1)*

Civil Procedure *— Parties — Application for declaration — Declaration relating to applications made by previous owner under ss 124 and 200 of the National Land Code 1965 — Whether previous owner need to be made a party to the action*

Civil Procedure *— Appeal — Time — Commencement of time for appeal — Whether appeal made out of time — National Land Code 1965 s 418(1)*

Land Law *— Administration — Officers — Powers and duties — Whether the Prime Minister is authorized to make decisions in respect of applications under ss 124 and 200 of National Land Code 1965*

Land Law *— Classification of land — Condition of land use — Whether approval is required for purposes of constructing condominium on land which had been categorized for 'building' — Meaning of 'appropriate authority' in s 116(1)(d) of National Land Code — National Land Code 1965 ss 124(1)(c) & 116(1)(d)*

On 28 August 1995, Tunku Makmun bin Tunku Sulaiman ('the previous owner') made applications ('the applications') pursuant to s 124 (for purposes of altering the category of land use) and s 200 (for approval to surrender part of the land for construction of roads) of the National Land Code 1965 ('the NLC') in relation to a piece of land owned by him ('the land'). However, the applications were rejected by the Prime Minister on 27 July 1996 and the decision was sent to the previous owner by a letter dated 25 September 1996 ('the letter'). On 16 November 1996, the plaintiff as the new owner of the land, appealed to the Ketua Setiausaha Negara to reconsider the applications but was further rejected. On 10 April 1998, the plaintiff filed an originating motion applying for various declarations, invoking s 418 of the NLC. The issues were whether: (i) the plaintiff was right in commencing the action by way of an originating motion; (ii) the previous owner should be made a party to the action; (iii) the application was made within the period stipulated under s 418; (iv) the Prime Minister has the authority to make the decision dated 27 July 1996; and (v) there was a need to make an application under s 124 of the NLC for purposes of constructing condominium on the land which had been categorized for use of 'building' .

Held, dismissing the application:

(1) While the action could be properly taken by way of an originating motion, the reliefs that the defendant applied for were not confined only to a declaration but also for orders of mandamus — paras (c) and (d) of the prayers. This triggers the requirement to comply with O 53 of the Rules of the High Court 1980. In the present application, such procedures had not been complied with and the plaintiff's action should be struck off (see p 46E–H).

(2) The previous owner need not be made a party to the action. He is no longer an interested party as all his rights and interests in respect of the land had been transferred to the plaintiff (see p 46E).

(3) The production of the letter by the plaintiff when appealing to the Ketua Setiausaha Negara on 16 November 1996 showed clearly that the plaintiff as of that date had knowledge of the decision rejecting its applications and as such, the period of three months stipulated under s 418(1) should begin from that date. The plaintiff only began its action on 10 April 1998 and thus the three months period had already passed (see p 47B, F).

(4) The Prime Minister is the number one administrative head concerning land matters in the Federal Territory. Whatever authority that has been given specifically to the Land Executive Committee is also lawfully granted to the Prime Minister. Thus, decisions in respect of the application under ss 124 and 200 of the NLC was within the powers lawfully granted to the Prime Minister (see p 48D–E).

(5) Section 124(1)(c) read together with s 116(1)(d) of the NLC clearly shows that a landowner does not have an automatic power to commence construction of condominium on the land — even though it is under the category of 'building' — without obtaining prior approval from the defendant (see p 49A).

Obiter:

It was incumbent upon the plaintiff or the previous owner of the land to inform the defendant in writing of the change of ownership in respect of the application under ss 124 and 200 of the NLC, especially for purposes of communication. Failure to inform the defendant of the change of ownership gives the defendant the right to communicate to the previous owner of the land (see p 47D–E).

[Bahasa Malaysia summary

Pada 28 Ogos 1995, Tunku Makmun bin Tunku Sulaiman ('pemilik terdahulu') telah membuat permohonan ('permohonan tersebut') mengikut ss 124 dan 200 Kanun Tanah Negara 1965 berhubungan dengan sebidang tanah yang dimiliki olehnya ('tanah tersebut').

Bagaimanapun, permohonan tersebut telah ditolak oleh Perdana Menteri pada 27 Julai 1996 dan keputusan tersebut telah dihantar kepada pemilik terdahulu dengan surat yang bertarikh 25 September 1996 ('surat tersebut'). Pada 16 November 1996, plaintif sebagai pemilik baru tanah tersebut telah merayu kepada Ketua Setiausaha untuk mempertimbangkan semula permohonan tersebut tetapi telah selanjutnya ditolak. Pada 10 April 1998, plaintif telah memfailkan suatu usul pemula memohon untuk pelbagai deklarasi, menggunakan s 418 Kanun Tanah Negara 1965 ('KTN'). Isu-isu adalah sama ada: (i) plaintif adalah betul dalam memulakan tindakan tersebut dengan cara satu usul pemula; (ii) pemilik terdahulu patut dijadikan satu pihak kepada tindakan ini; (iii) permohonan tersebut telah dibuat dalam tempoh masa yang diperuntukkan di bawah s 418; (iv) Perdana Menteri mempunyai kuasa untuk membuat keputusan bertarikh 27 Julai 1996; dan (v) terdapat satu keperluan untuk membuat permohonan di bawah s 124 KTN untuk tujuan membina kondominium di atas tanah tersebut yang telah dikategorikan untuk kegunaan 'bangunan'.

Diputuskan, menolak permohonan:

(1) Walaupun tindakan tersebut boleh dimulakan dengan usul pemula, relif-relif yang dipohon oleh defendan adalah tidak terbatas semata-mata kepada deklarasi tetapi juga untuk perintah-perintah mandamus — perenggan (c) dan (d) dalam tuntutan tersebut. Ini mencetuskan keperluan untuk mematuhi A 53 Kaedah-Kaedah Mahkamah Tinggi 1980. Dalam permohonan ini, prosedur-prosedur yang tersebut telah tidak dipatuhi dan tindakan plaintif seharusnya dibatalkan (lihat ms 46E–H).

(2) Pemilik yang terdahulu tidak perlu dijadikan satu pihak kepada tindakan tersebut. Beliau tidak lagi merupakan satu pihak berkepentingan kerana kesemua hak-hak dan kepentingan-kepentingannya berkenaan dengan tanah tersebut telah dipindahmilik kepada plaintif (lihat ms 46E).

(3) Oleh kerana pengemukaan surat tersebut oleh plaintif semasa merayu kepada Ketua Setiausaha Negara pada 16 November 1996 menunjukkan dengan jelas bahawa plaintif pada tarikh tersebut mempunyai pengetahuan tentang keputusan menolak permohonannya, tempoh masa tiga bulan yang diperuntukkan di bawah s 418(1) seharusnya bermula dari tarikh tersebut. Plaintif hanya memulakan tindakannya pada 10 April 1998 dan oleh itu, tempoh masa tiga bulan tersebut telahpun berlalu (lihat ms 47B, F).

(4) Perdana Menteri merupakan ketua pentadbiran yang pertama berkenaan dengan hal-hal tanah dalam Wilayah Persekutuan. Apa-apa kuasa yang telah diberikan secara khusus kepada Jawatankuasa Eksekutif Tanah adalah juga secara sah diberikan kepada Perdana Menteri. Oleh itu, keputusan berkenaan dengan permohonan di bawah ss 124 dan 200 KTN adalah dalam

lingkungan kuasa yang diberikan secara sah kepada Perdana Menteri (lihat ms 48D–E). A

(5) Seksyen 124(1)(c) dibaca bersama dengan s 116(1)(d) KTN menunjukkan dengan jelas bahawa seorang pemilik tanah tidak mempunyai kuasa automatik untuk memulakan pembinaan kondominium atas tanah tersebut — walaupun ia adalah di bawah kategori 'bangunan' — tanpa memperolehi pengesahan terdahulu daripada defendan (lihat ms 49A). B

Obiter:

Adalah wajib ke atas plaintif atau pemilik terdahulu tanah tersebut untuk memberitahu defendan secara bertulis tentang pertukaran pemilikan berkenaan dengan permohonan di bawah ss 124 dan 200 KTN, terutamanya untuk tujuan komunikasi. Kegagalan untuk memberitahu defendan tentang pertukaran pemilikan memberi kepada defendan hak untuk berkomunikasi kepada pemilik terdahulu tanah tersebut (lihat ms 47D–E).] C D

Notes

For cases on mode of commencement of application for declaration, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3130–3134.

For a case on parties in application for declaration, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 3248. E

For cases on powers and duties of administration officers, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1320–1332.

For cases on condition of land use, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1570–1571. F

Cases referred to

London Passenger Transport Board v Moscrop [1942] AC 332 (refd)

Legislation referred to G

Federal Constitution arts 39, 43, 43A
Federal Territory (Modification of National Land Code) Order 1974
National Land Code 1965 ss 116(1)(d), 124, 200, 418(1)
Perintah Menteri-Menteri Kerajaan Persekutuan 1995
Rules of the High Court 1980 O 53 rr 1, 3 H

Michael KT Chow (*Logan Sabapathy & Co*) for the plaintiff.
Asma Bee (Senior Federal Counsel) for the defendant.

Azmel J: The plaintiff in this case had applied by way of an originating motion for the following orders: I

(a) a declaration that the decision of the defendant (Jawatankuasa Kerja Tanah Wilayah Persekutuan) as embodied in its letter dated

A 14 January 1998 purporting to reject and/or refuse approval to the applications made under ss 124 and 200 of the National Land Code 1965 in relation to the land held under HS (D) 32106 PT No 881 Mukim and District of Kuala Lumpur ('the said land') is null and void and of no effect and/or consequently hereby set aside pursuant to the provisions of s 418 of the National Land Code 1965;

B (b) a declaration that in all the circumstances of the case there is no necessity for an application under s 124 of the National Land Code 1965 to be made for and in respect of the said land whether pursuant to the development order dated 17 November 1995 issued by Datuk Bandar Kuala Lumpur or otherwise;

C (c) an order for specific relief against the defendant directing the defendant to forthwith process and approve the pending or other applications made in respect of the said land under ss 124 and/or 200 of the National Land Code 1965 upon such terms and/or directions as this Honourable Court deems fit in the circumstances of the case;

D (d) such further relief or other orders and/or directions be made or given as this honourable court deems fit in the circumstances of the case including, if necessary, a declaration that the defendant's letter of 25 September 1996 was in truth and substance not a valid or proper decision of the defendant in relation to 28 August 1995 applications made by Tunku Makmun bin Tunku Sulaiman under ss 124 and 200 of the National Land Code 1965 on the said land.

E (e) costs of and occasioned by these proceedings be provided for in favour of the plaintiff.

The facts of the case can be summarised as follows. On 28 August 1995, Tunku Makmun bin Tunku Sulaiman ('previous owner of the said land') made applications under s 124 of the National Land Code 1965 for purposes of altering the category of land use of the said land and also under s 200 of the National Land Code for approval to surrender part of the said land for construction of roads.

On 27 July 1996, the Prime Minister in his capacity as the Minister responsible for land in the Federal Territory made a decision to reject the applications by the previous owner of the said land. The said decision was sent to the previous owner of the said land by way of a letter dated 25 September 1996. No new applications were subsequently made by the previous owner of the said land or by the plaintiff.

On 16 November 1996, the plaintiff as the new owner of the said land made an administrative appeal to the Ketua Setiausaha Negara requesting him to reconsider the applications made under ss 124 and 200 of the National Land Code made by the previous owner of the said land. However, this appeal was rejected by the Ketua Setiausaha Negara vide letter to the plaintiff dated 14 January 1998 and 3 March 1998. Subsequent to that on 10 April 1998, the plaintiff filed this action in court by way of an originating motion by invoking s 418 of the National Land Code.

The first issue that need to be considered is whether the plaintiff was right in bringing this action by way of an originating motion under s 418 of National Land Code. Section 418 reads as follows:

> Appeals to the Court
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> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
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> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make order thereof as it considers just.
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> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

It was alleged by the defendant that the plaintiff in taking this action under s 418 of the National Land Code for prayers under paras (a), (b), (c) and (d) by way of an originating motion was procedurally improper. The defendant contended that for a relief of a declaration it is essential that the party really interested in the action be made a party to the action failing which the declaration should not be granted (see *London Passenger Transport Board v Moscrop*) [1942] AC 332). This application was commenced by the previous owner of the said land, yet he was not made a party to this action.

I am of the view that the defendant's argument cannot be sustained. The previous owner of the said land was no longer an interested party as all his rights and interests in respect of the said land had been transferred to the plaintiff who had purchased the said land from him. As such he need not be made a party to this action anymore.

While I would not disagree that this action be properly taken by way of an originating motion, the reliefs that the defendant applied for were not confined only to declaration but also for orders of mandamus as stated in paras (c) and (d) of the prayers. In fact, the prayer applied under para (a) is more in the nature of an order of certiorari disguised as a declaratory order. As the relief requested under para (c) is in fact a request for an order of mandamus, it triggers the requirement to comply with the provisions of O 53 of the Rules of the High Court 1980. One of the essential requirements that the plaintiff had to comply is to obtain leave of the court under O 53 r 1 before taking this action, and before obtaining leave, notice of such application together with the cause papers will have to be served on the Attorney General as required under O 53 r 3. In this application, such procedures had not been complied with by the plaintiff. As such, I am of the view that on this ground alone, the plaintiff's action should be struck off.

The second issue deals with the question of whether this application was made within the period as stipulated under s 418 of the National Land Code. Section 418(1) states that such appeal must be made at any time within three months from the date the decision was communicated to the plaintiff. The question is when was such decision communicated to the plaintiff. As had been mentioned above, the application under ss 124 and 200 of the National Land Code was made by the previous owner of the said

land on 28 August 1995. The decision to reject it was made by the Prime Minister on 27 July 1996 and such decision was sent by letter to the previous owner of the said land on 25 September 1996. However, no evidence of service of the letter effected to the previous owner of the said land was produced. Yet, on 16 November 1996, the plaintiff in making an administrative appeal to the Ketua Setiausaha Negara produced a copy of the said letter of rejection in its appeal application. In my view the production of that letter showed clearly that the plaintiff as of that date had knowledge of the decision of the defendant and as such, the period of three months should begin from that date. No amount of denial by the plaintiff, including that the letter being addressed to the previous owner of the said land, would help to argue that the plaintiff had no knowledge of the decision. In fact it was quite legitimate for the defendant to send the letter to the previous owner of the said land because the original applications under ss 124 and 200 of the National Land Code were made by the previous owner of the said land. And there was no evidence adduced that the previous owner of the said land or the plaintiff had informed the defendant of the change of ownership to the plaintiff. To argue that the change of ownership had been registered in the register of title and as such, the defendant should therefore have knowledge is devoid of any merit. It was incumbent upon the plaintiff or the previous owner of the said land to inform the defendant in writing of the change of ownership in respect of the application under ss 124 and 200 of the National Land Code, especially for purposes of communication. Failure to inform the defendant of the change of ownership gives the defendant the right to make communication to the previous owner of the said land. In the circumstances, I am fully satisfied that the decision of the defendant dated 25 September 1995 had been communicated to the plaintiff on or before 16 November 1996. Hence, for purposes of taking any action under s 418(1) of the National Land Code the period of three months should commence on 16 November 1996.

But the plaintiff only began this action in court under s 418 of the National Land Code on 10 April 1998. It had certainly passed the three months period, by almost 17 months. The plaintiff had therefore failed to comply with the requirement of s 418(1) of the National Land Code. In its application the plaintiff had never applied for any extension of time to file this action. As no such application for extension of time being made by the plaintiff, the question of granting any extension of time does not arise. Hence, this application should be struck off for want of compliance with the provision of s 418(1) of the National Land Code.

The third issue concerns the validity of the decision dated 27 July 1996 made by the Prime Minister. It was argued by the plaintiff that the Prime Minister was not authorized to make the decision under ss 124 and 200 of the National Land Code. The Federal Territory (Modification of National Land Code) Order 1974 had delegated the authority to deal with land matters in the Federal Territory to the Land Executive Committee for the Federal Territory and as such no other persons should be authorized to deal with such matters. Therefore, the Prime Minister was not an authorized person to make such decision. I am of the view that there is no merit in this

argument. Ministers including the Prime Minister derive their powers under art 39 of the Federal Constitution. Article 39 reads:

> Executive Authority of Federation
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> The executive authority of the Federation shall be vested in the Yang di-Pertuan Agong and exercisable, subject to the provisions of any federal law and of the Second Schedule, by him or by the Cabinet or any Minister authorized by the Cabinet, but Parliament may by law confer executive functions on other persons.

In accordance with the Perintah Menteri-Menteri Kerajaan Persekutuan 1995 made by virtue of arts 43 and 43A of the Federal Constitution by the Yang di-Pertuan Agong, the Prime Minister was entrusted with a list of duties and responsibilities as stated in the abovesaid Perintah. One of the several responsibilities of the Prime Minister is to take care of the Pejabat Tanah Wilayah Persekutuan in matters pertaining to 'Pentadbiran Jabatan-Jabatan Tanah dan Galian Wilayah Persekutuan Kuala Lumpur dan Labuan' and 'Tanah Perlombongan dan Tanah Rizab Melayu di Wilayah Persekutuan Kuala Lumpur dan Labuan.' For all intent and purposes, the No 1 administrative head concerning land matters in the Federal Territory is the Prime Minister. All the rest, including the Land Executive Committee, are his subordinates. There should not be any doubt whatsoever that making decision in respect of application under ss 124 and 200 of the National Land Code which was applied by the plaintiff/previous owner of the said land was within the powers lawfully granted to the Prime Minister. As I have remarked above, the Land Executive Committee of the Federal Territory is an authority subordinate to the Prime Minister on matters dealing with land in the Federal Territory. Whatever authority has been given specifically to the Land Executive Committee of the Federal Territory, such authority is also lawfully granted to the Prime Minister as the Minister in charge of the Federal Territory. As an analogy, whatever authority has been given to the judge of the sessions court, the Chief Justice of the Federal Court who is in charge of all courts in Malaysia will also have authority, and if he so wishes, the Chief Justice has the power to hear and decide cases in the sessions court.

On the issue whether, for purposes of constructing condominium on the said land which had already been categorized for use of 'building', there would still be a need to make an application under s 124 of the National Land Code, I completely agree with the submission of the Senior Federal Counsel that s 124 read together with s 116 of the National Land Code shows clearly that such application has to be made and the approval obtained before such works can commence. Section 116 deals with implied conditions affecting land subject to the category 'building'. Under sub-s 1(d) it says:

> that no such building shall be demolished, altered or extended without the prior consent in writing of the appropriate authority.

The term 'appropriate authority' in this section refers not to the Dewan Bandaraya Kuala Lumpur but to the defendant.

A Hence, s 124(1)(c) read together with s 116(1)(d) of the National Land Code clearly shows that a landowner does not have automatic power to commence construction of condominium on the said land even though it is under category 'building' without obtaining prior approval from the defendant. I therefore held that the plaintiff's contention on this issue cannot be sustained.

B After having considered all the circumstances of this case, I ruled that the decision of the Prime Minister had been validly executed, and his reasons for rejecting the application were fair and just. I was unable to find any reason why that decision should be disturbed.

In the circumstances and for the reasons as I have stated above, the C application was dismissed with costs.

Application dismissed with costs.

Reported by Tan Kah Bee

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